Further I find nothing in the record to show that the witness who accepted the challenge was of that religious persuasion that makes the cutting of a cockerel's head a form of oath that she believes to be completely binding on her. In the absence of any such evidence her act cannot be said *per se* to have established beyond reasonable doubt the identity of a person who had robbed her.

What however is the fundamental objection of the whole proceedings is that while this unusual form of oath or any other usual form of oath is permissible in court so long as it is not repugnant to justice or decency and does not affect any third party under section 8 of the Oaths and Affirmation Ordinance No. 51 of 1949, it is by section 9 of the same Ordinance limited to judicial proceedings of a civil nature. There is therefore no justification whatsoever for permitting this form of oath or this challenge to be taken in criminal proceedings.

In my view the entire proceedings in the court below are a complete nullity. The conviction must be quashed and the sentence set aside and a retrial ordered before another president.

Order accordingly.

TAY CHOON & ORS. v. JEET KAUR

[R.C.J. (Syed Othman J.) February 26, 1972]

[Johore Bahru — Civil Revision No. 1 of 1972]

Practice and Procedure — Pleadings — Statement of claim signed by person other than plaintiff — Effect of — Subordinate Courts Rules 1950, O. X r. 1, O. VI r. 3, O. XIX r. 2.

Practice and Procedure — Execution order — Levying of — Attachment — Judgment obtained by default of appearance in absence of defendants — Service of copy of judgment on judgment debtor — Necessity for — Delay — Intention to embarrass defendant — Subordinate Court Rules, 1950, O. XXI, rr. 2 & 4, O. XX r. 6(2).

Practice and Procedure — Jurisdiction — Powers of revision — Courts of Judicature Act, 1964, s. 33.

Moneylenders — Promissory note, action on — "Agent" suing in the name of the "principal" — No evidence that "agent" was licensed to carry on business as agent — Moneylenders Ordinance, 1951, s. 5.

This was a petition for revision of a magistrate's judgment against the petitioners/defendants to pay the respondent/plaintiff the sum of $433.50, including costs, on a claim under a promissory note. The judgment had been obtained by default of appearance. The petition alleged, *inter alia*, that the action had been brought by a person other than the plaintiff named in the statement of claim and that none of the defendants had been served with a copy of the judgment even when the house of the first defendant was attached under an execution order. The execution order was issued on March 3, 1971, but was levied in February 1972, a few days before the Chinese New Year.

Held: (1) although at law a plaintiff is entitled to levy execution at any time within one year from the date of issue, in this case, since it was done a few days before the Chinese New Year, the clear intention of the levy was to embarrass the first defendant, a Chinese, and her family during the festive season;

(2) on the face of it the registrar should have rejected the statement of claim on the ground that it was not signed by the plaintiff or his solicitor as required by O. X r. 1 of the Subordinate Courts Rules, 1950;

(3) where judgment had been obtained by default of appearance, the registrar should not issue execution unless the judgment creditor has shown to him, in such form as the registrar considers necessary, that a copy of the judgment has been served on the judgment debtor.

REVISION PETITION.

Syed Othman J.: The petitioners were defendants in Johore Bahru Magistrate's Court Civil Action No. 296 of 1969. They have petitioned for a revision of the magistrate's judgment against them to pay the respondent, the person named as the plaintiff in the said action, the sum of $433.50 including costs on a claim under a promissory note.

Most of the grounds which have been raised in the petition have no substance. I need only concern myself with the allegations that the action had been brought by a person other than the plaintiff named in the statement of claim and that none of the defendants had been served with a copy of the judgment even when the house of the first defendant was attached under an execution order. From the magistrate's record the court issued the execution order as far back as 3rd March, 1971, but it was not levied until just a few days ago. No doubt at law a plaintiff is entitled to levy execution at any time within one year from the date of issue, but in this case, since it was done just a few days before the Chinese New Year, the clear intention of the levy was to embarrass the first defendant, a Chinese, and her family during the festive season.

On perusing the record I find that there were irregularities which warrant me to exercise my powers of revision under the Courts of Judicature Act, 1964. On 15th February, 1972 I ordered the judgment of the learned magistrate to be set aside, the execution order to be revoked and the statement of claim to be rejected. These are my reasons.

The statement of claim in the civil action which was purported to have been brought by the plaintiff was not signed by the plaintiff. It was signed by an unknown person who described himself as "agent". There was no indication in the statement of claim as to what was the relationship between the "principal" (*i.e.* the person named as plaintiff) and the "agent", which gives the "agent" the right to sue in the name of the "principal". It was not even shown anywhere in the pleadings or the court record that he was licensed to carry on business as an agent under section 5 of the Moneylenders Ordinance, 1951. On the face of the statement of the claim the registrar should have rejected it on the ground that it was not signed by the plaintiff or his solicitor as required by Order X rule 1 of the Subordinate Courts Rules, 1950. Order VI rule 3 specifically requires the registrar to examine a summons presented for filing. The rule also gives him power to reject a summons or direct it to be amended if he is of the opinion that it is not in proper form. The form can hardly be said to be proper in this case when the statement of claim was signed by a person other than the plaintiff herself.

Even assuming that the form was proper the learned magistrate before entering judgment should have enquired whether the person who appeared on behalf of the plaintiff had the right to appear. By Order XIX rule 2 of the Subordinate Courts Rules, so far as it is relevant to this case, the plaintiff could only appear in person or by a solicitor; or if she was not in the Federation or in Singapore by her duly authorised attorney. There is nothing in these rules which allows an agent to appear on behalf of the principal. The magistrate's notes do not even show the name of the person who actually appeared in court when judgment was entered. The fact that appearance on behalf of the plaintiff was by "agent" is only shown in the judgment order that has been extracted.

I come now to execution. Judgment in this case was obtained by default of appearance. Order XXI rule 2 says:

"Every person directed by any judgment to do any act shall comply therewith without demand, and it shall not be necessary to serve him therewith or with any notice thereof save as provided in Order XX rule 6 sub-rule (2)."

The first sentence of Order XX rule 6(2) reads:

"If the person required to do such act was personally present or represented by a solicitor when the judgment or order was given or made, it shall not be necessary to serve him with a copy thereof or any notice of the consequences of default."

Since in this case the defendants were absent and were not represented by a solicitor when judgment was obtained the necessity arose under Order XX rule 6(2) that they should have been served with a copy of the judgment before any step could be taken to enforce the judgment. The court issued the judgment order on 20th August, 1969. Nowhere in the court's record it is shown that the order had been served when the application was made for the issue of execution. Order XXI rule 4 in effect requires the registrar to sign the order "if there appears no reason why execution should not issue." Having regard to Order XX rule 6(2), the implication of this rule should be clear. It is that an order of execution is not issued as a matter of course after judgment has been obtained. Where it has been obtained by default of appearance, as in this case, the registrar should not issue execution unless the judgment creditor has shown to him, in such form as the registrar considers necessary, that copy of the judgment has been served on the judgment debtor.

Order accordingly

DAVID LAU TAI BEK v. LAU EK CHING SDN. BHD.

[O.C.J. (Sharma J.) March 1, 1972]

[Ipoh — Originating Summons No. 631 of 1971]

Companies — General meeting — Convening of annual general meeting — Failure to give notice of postponement — Irregularity — Waiver — Rights of members — Powers of court — Companies Act, 1965, ss. 143(4)(b), 145(2).

The plaintiff is a shareholder in the defendant company. On October 28, 1970, a notice calling the annual general meeting of the company was issued, stating that this meeting was to be held on November 14, 1970 at the company's registered office. No meeting took place on this date. Instead, it was held on November 17, 1970. The plaintiff was not notified of the change of date either orally or in writing. The managing director of the company had communicated the information to the members orally.

Article 73 of the company's articles of association provides that if there was no quorum present at the meeting it "shall stand adjourned to the same day in the next week, at the same time and place, or to such other day, time and place as the directors may by notice to the shareholders appoint".

The plaintiff sought a declaration that the meeting held on November 17, 1970, was null and void, and that the court should act under section 143(4)(b) of the Companies Act and order the annual general meeting to be called.

Held, dismissing the application: (1) once a meeting has been called, the directors have no power to postpone it, and if it has to be postponed, it can only be in accordance with the provisions of the articles of association of the company;

(2) if *all the members* entitled to attend a meeting do so and vote unanimously in favour of a resolution or assent unanimously to the resolution without a meeting being held at all, they are taken to waive any irregularities attending the passing of the resolution, and it is as effective as if it had been properly passed at a duly convened meeting. A majority, however, large, has no power to waive formalities except when the Companies Act so provides. In the present case, there was no assent by the plaintiff and consequently it was not *all* the members who had waived the irregularity in the holding of the meeting on November 17, 1970;

(3) in the circumstances of this case, no practical good could come out of the court ordering a fresh meeting to be called. All except the plaintiff seemed satisfied with what had been done. Thus it was a matter which a majority of the members could, by an ordinary resolution, set right and adopt.

Cases referred to:-

(1) *Smith* v. *Paringa Mines, Ltd.* [1906] 2 Ch. 193.

(2) *Parker and Cooper Ltd.* v. *Reading* [1926] Ch. 975 at p. 984.

(3) *In re Express Engineering Works* [1920] 1 Ch. 466 at p. 470.

(4) *In re George Newman & Co.* [1895] 1 Ch. 674.

(5) *In re Oxted Motor Co. Ltd.* [1921] 3 K.B. 32.

(6) *Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China and Japan* (1868) 6 Eq. Cas. 91.

(7) *Foss* v. *Harbottle* (1843) 2 Hare 461; 67 E.R. 189.

(8) *Burland* v. *Earle* [1902] A.C. 83.

(9) *MacDougall* v. *Gardiner* [1875] 1 Ch. D. 13 at p. 25.

(10) *Pender* v. *Lushington* (1877) 6 Ch. D. 70 at p. 80, 81.

(11) *Edwards* v. *Halliwell* [1950] 2 All E.R. 1064.

(12) *Musselwhite* v. *Musselwhite* [1962] Ch. 964.

(13) *Cotter* v. *National Union of Seamen* [1929] 2 Ch. 58 at p. 70.